

the outcome of the proceeding may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC's Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve one copy thereof on the other parties to the proceeding. The Secretary will place a copy of such briefs, memoranda, statements and responses in the public file.

§ 1102.35 Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36 Oral presentations.

(a) *In general.* A party does not have a right to an oral presentation. Under this section, a party's request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) *Method and time of request.* Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with

the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) *ASC processing.* The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC's senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party's letter request and the ASC's response will be included in the proceeding's public file.

(d) *Procedure on presentation day.* On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding's public file a memorandum summarizing the subjects discussed during the oral presentation.

§ 1102.37 Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the FEDERAL REGISTER. The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding's public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

§ 1102.38 Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding

under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

§ 1102.39 Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

AUTHORITY: 12 U.S.C. 552a.

SOURCE: 57 FR 36357, Aug. 13, 1992, unless otherwise noted.

§ 1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93-579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The